

restrictions, qualifications, fixed annual dividends, times or prices of redemption or conversion rights, shall have been so fixed or altered, and shall in other respects be executed, acknowledged and recorded in the manner, including payment of the same recording fees, prescribed in Section 29 of this Article with respect to articles of amendment. A duly certified copy of such articles supplementary from the records of the State Tax Commission or the Circuit or Superior Court shall be evidence of the classification so fixed or altered and therein set forth.¹

Stock issued under sec. 408 of the Code of 1904 and called "preferred stock," held not to be ordinary preferred stock, but that the holders thereof, by virtue of the act of 1880, ch. 474, acquired a lien on the franchises and property of the corporation which gave them priority as to such franchises and property over general creditors, but not as to merchandise manufactured and sold or the proceeds thereof, nor as to insurance and rents collected. Change in this section wrought by the act of 1880, ch. 474—the latter act held valid. As between creditors and the holders of ordinary preferred stock, the former have priority in the distribution of assets. *Heller v. Marine Bank*, 89 Md. 608; *Leviness v. Consol. Gas Co.*, 114 Md. 572. And see *Baltimore, etc., Ry. Co. v. Godeffroy*, 182 Fed. 525 (dissenting opinion).

The lien of preferred stockholders under sec. 408 of the Code of 1904, held to be dischargeable as to any particular part of the corporate property under a decree of a court of equity in a proceeding in which fairly selected representatives of the preferred stockholders are parties, and in which the reasonable necessity for a sale is alleged and proven, and suitable provision made for the protection of the lienors relative to the proceeds of sale. Such lien is a fixed and not a floating charge, and is not intended only to control the distribution of the corporate assets in case of insolvency or liquidation. *Leviness v. Consol. Gas Co.*, 114 Md. 561.

The holders of preferred stock issued under sec. 408 of the Code of 1904, whose certificates provided that the holder should be entitled to such dividend as might be declared "up to but not exceeding four per centum before any dividend shall be set apart or paid upon the common stock," held to be entitled to a dividend of four per centum and no more, such dividend being payable before any dividend was paid to the holders of common stock. *Scott v. B. & O. R. R. Co.*, 93 Md. 500.

The non-compliance by a corporation with certain provisions of sec. 408 of the Code of 1904, and of secs. 69, 70, and 81 of the same Code (see secs. 45 and 53), held to form no ground of recovery in an action for misrepresentation and deceit. *Robertson v. Parks*, 76 Md. 133.

Common stockholders are necessary parties to a bill in equity filed by the holders of preferred stock under sec. 408 of the Code of 1904, to compel the execution and record of an agreement alleged to have been provided for under said section. *Baltimore, etc., Ry. Co. v. Godeffroy*, 182 Fed. 525.

Defences growing out of sec. 408 of the Code of 1904, held not properly presented by demurrer to the *narr.*; they should be raised by pleas. *Republic Iron Co. v. Carlton*, 189 Fed. 126.

Sec. 408 of the Code of 1904 cited but not construed in *Rogers v. Citizens' Bank*, 93 Md. 615.

Cited but not construed in *Maas v. Maas*, 165 Md. 347; *Coffman v. Publishing Co.*, 167 Md. 286.

See notes to secs. 403 and 43.

See notes to secs. 9, 12 and 45.

An. Code, 1924, sec. 39. 1916, ch. 596, sec. 34A. 1920, ch. 545, sec. 34A. 1927, ch. 581, sec. 39. 1929, ch. 226, sec. 39 (1) (p. 719). 1935, ch. 551, sec. 39. 1937, ch. 504, sec. 39.

43. (1) Any corporation of this State, heretofore or hereafter incorporated, except a banking, safe deposit, trust or loan corporation, may create one or more classes of stock without any nominal or par value, with such preferences, voting powers, restrictions and qualifications thereof not inconsistent with law as shall be expressed in its charter. Stock without par value of any class may be made subject to redemption at such times and prices as may be determined in such charter. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the charter. In any case in which the par value of the shares

¹ See footnote to sec. 23.